



JUL 10 2019

Emma Best
MuckRock News
DEPT MR 47786
411A Highland Ave.
Somerville, MA 02144-2516
47786-79633195@requests.muckrock.com

Re: Freedom of Information Act Appeal NGC19-004A

Dear Ms. Best:

This is in response to your October 15, 2018 letter, in which you appeal the response made by the National Archives and Records Administration's (NARA) Special Access and FOIA Staff, in connection with your Freedom of Information Act (FOIA) request (assigned RD 55895) for Federal Bureau of Investigation (FBI) case file 100-HQ-3, Sub file 81-A. Your appeal was received in this office on October 22, 2018, and assigned tracking number NGC19-004A.

On January 23, 2018, through *FOIAonline*, you requested "A copy of FBI file 100-HQ-3 Sub file 81-A, which per FBI relates to the deceased John C. Boger." Your request was forwarded to the Special Access and FOIA Staff for processing on the same day.

In an email dated January 24, 2018, Special Access and FOIA Staff responded to your request and informed you that, after examining FBI case file 100-HQ-3 Sub file 81-A, they determined that the file was unresponsive to your request. The subject of the file is the Communist Party USA-International Relations and consists of approximately 9,000 pages within 40 sections. The vast majority of the file consists of newspaper clippings, and the staff were unable to locate John C. Boger's name within the file. They went on to explain that they would not review the file in response to your request.

In your October 22, 2018 appeal, you appealed the Special Access and FOIA Staff's response, stating: "I am appealing the decision to not to review case file 100-HQ-3 Sub file 81-A, the file that I explicitly requested, on the basis of the analyst's decision that it 'probably' would not have what I'm actually interested in despite being literally the exact file that I requested and my having documentation from the FBI that the file IS, in fact, responsive to the materials that NARA declares 'probably' isn't in there and falsely assumes is my only interest in the file."

In the closing paragraph of NARA's January 24, 2018, letter, Special Access and FOIA Staff informed you of your right to appeal, and explained that it must be done within 90 calendar days from the date of our response to your request. This 90 deadline is established in the FOIA statute, at 5 U.S.C. § 552(a)(6)(A)(i)(III)(aa) and in our FOIA regulation, at 36 C.F.R. § 1250.72. Accordingly, your appeal was required to be submitted by April 18, 2018, a deadline you missed by over six months when you filed this appeal on October 22, 2018. Therefore, your appeal is denied as untimely.

Nonetheless, in light of our delay in responding to your appeal and the Special Access and FOIA Staff's mis-interpretation of your initial request, we have decided to re-open your case (RD 55895) and put it in the same place in the queue it would have been in if the case had not been closed. You will receive a response in partial fulfillment of your request after the Special Access and FOIA Staff have completed the first installment. They will provide you with an update on the status of your request and an estimated completion date at that time. To give you an indication of our existing backlog, staff are currently processing requests made in December of 2010. If you have any further questions relating to the FOIA case, please contact the Special Access and FOIA Staff at:

Special Access and FOIA Staff
8601 Adelphi Road, Room 5500
College Park, MD 20740-6001
Email: specialaccess_foia@nara.gov

For your information, under the Federal Records Act, 44 U.S.C. § 2116(c), the Archivist may charge a fee set to recover the costs for making or authenticating copies of reproductions of materials transferred to his custody. Such fees shall be fixed by the Archivist at a level which will recover, so far as practicable, all elements of such costs. Fee waivers are not granted for accessioned records, and the cost for copying paper to paper is \$.80 per page for NARA reproduction services and \$.25 per page for self-service. NARA's fee statute supersedes the FOIA's fee provisions, in accordance with 5 U.S.C. 552(a)(4)(A)(vi). Please see the following webpage for more information: <https://www.archives.gov/research/order/fees>.

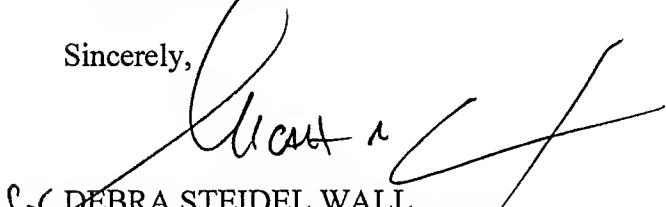
This completes the processing of your appeal.

For your information, the Office of Government Information Services (OGIS), the Federal FOIA Ombudsman's office, offers mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation. You may contact OGIS in any of the following ways:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road – OGIS
College Park, MD 20740-6001
ogis@nara.gov
ogis.archives.gov
202-741-5770
1-877-684-6448

Your administrative remedies are now exhausted. If you are dissatisfied with my action on your appeal, the FOIA permits you to file a lawsuit in federal district court in accordance with 5 U.S.C. § 552(a)(4)(B). You may seek judicial review in the U.S. District Court for the District of Columbia, in the United States District Court for the judicial district in which you reside or do business, or where the records are located – in this instance, in the District of Maryland.

Sincerely,



DEBRA STEIDEL WALL
Deputy Archivist of the United States

Official: NGC

Reading: ND, NGC

Information Copy: NGC

NGC:JLFoor/jlf 07/10/2019

S:foia/requests/FY19 Initial request – appeals File code 1103-6